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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,463	11/12/2003	Judith Schwabe	P-4181CIP	9131
24209 7590 07/01/2008 GUNNISON MCKAY & HODGSON, LLP 1900 GARDEN ROAD SUITE 220 MONTEREY, CA 93940				
EXAMINER				
VU, TUAN A				
ART UNIT		PAPER NUMBER		
2193				
MAIL DATE		DELIVERY MODE		
07/01/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/712,463

Applicant(s)

SCHWABE ET AL.

Examiner

Tuan A. Vu

Art Unit

2193

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 5/27/08 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-78.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Tuan A Vu/
Primary Examiner, Art Unit 2193

Continuation of 11, does NOT place the application in condition for allowance because: The arguments submitted in the response amount to denigrating what Applicants perceived as deficiencies in Yellin; and in such light, Yellin is deemed not rearranging code when the verifier identifies a stack conflict. The office Action in analyzing Yellin has pointed out a same endeavor as addressing mismatch in operands size and has applied Wilkinson to correct what Yellin does not teach explicitly. The rationale as to combine teachings is set forth in the rejection, but in view of the above argument, the Applicants contend with not showing how such combination would fail but rather, seem to focus in attacking one reference only; and this approach has been addressed in sections C, D and F of the Response to Arguments in the action of 3/27/07. Applicants have stressed on Yellin not considering changing instructions to preserve runtime efficiency, yet has failed to show proper evidences that clearly enforce a deliberate scenario wherein Yellin would not and will never rearrange the bytecodes when memory conflicts occur near runtime, a scenario hard to construe for any ordinary skill in the art. The rejection has provided Yellin's ways for rearranging of structures in Yellin's analyzing of stack state, and based on teachings by Wilkinson has proposed a manner by which stack issues like in Yellin with mismatch of operand sizes --which is typical in platform porting issues-- can be readdressed by code conversion as taught in Wilkinson to accommodate platform differentials. The grounds of the 103 rationale is flowing out of many basis starting from suggestion in one reference, level of commonality in both references to teaching in the second reference, to end with a proposed action (to fulfill the obvious feature - converting of instructions) based on a motivation associated with a good known result stemmed from the endeavor to solve a common issue identified by both reference, and level of one of ordinary skill in the art when faced with all of the above. Applicants took the position not to concede that prima facie is established yet did not provide character and weight in terms of evidences in the references that would clearly prohibit code conversion from being possible. Well-known practices had it that byte code is a form of code that can be easily modifiable prior to runtime, and there is no counter teaching (contrary to Applicant's viewpoint) in the fact that a Java-based interpreter environment modifies bytecode format in order to address a size conflict. The argument for attacking one reference is deemed not sufficient to overcome a combination of two teachings. The rejections of claims 1-78 under Yellin and Wilkinson will stand, and the terminal Disclaimer is acknowledged.